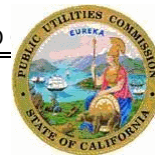


PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

**FILED**

10-31-14

Agenda ID #12438

Quasi-legislative

October 31, 2014

TO PARTIES OF RECORD IN RULEMAKING 08-12-009:

This is the proposed decision of Commissioner Peevey. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 4, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan

Chief Administrative Law Judge (Acting)

TJS:ms6

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 10/31/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Smart Grid Technologies Pursuant to
Federal Legislation and on the
Commission's own Motion to Actively
Guide Policy in California's Development of
a Smart Grid System.

Rulemaking 08-12-009
(Filed December 18, 2008)
All Phases

**DECISION CLOSING PROCEEDING
AND DENYING PETITION TO MODIFY****Summary**

In this decision, we close this proceeding, a rulemaking to consider Smart Grid Technologies. This rulemaking addressed both Federal legislation and state legislation and advanced the California Public Utility Commission's (CPUC or the Commission) goal of actively guiding policy in this area.

Following a careful review of the record and the comments filed pertaining to the closing of this proceeding, we have determined that the only remaining issues concern access to multi-family building data and designating a suitable reservoir for future American Recovery and Reinvestment Act¹ compliance filings and other mandated reports.

Given the existence of other appropriate forums to address both future compliance filings and outstanding data access issues, we conclude that all of the

¹ American Recovery and Reinvestment Act (Recovery Act) of 2009 (Re, Pub. L. 111-5 (H.R. 1), 123 Stat. 115.

major outstanding issues have either been resolved or may be redirected to an alternative forum.

We deny MCE's petition for modification² without prejudice, and assign those outstanding data issues to R. 13-11-005.

In addition, this decision corrects minor clerical and administrative errors in D. 11-07-056 and D. 12-08-045. These corrections are necessary to clarify Investor-owned Utility (IOU) compliance directives in accordance with the established rules and procedures contemplated within this rulemaking and to ease administration

This proceeding is closed.

1. Background

The Commission initiated this Order Instituting Rulemaking (OIR) to "consider setting policies, standards and protocols to guide the development of a smart grid system and facilitate integration of new technologies such as distributed generation, storage, demand-side technologies and electric vehicles."³

The OIR further noted that as a consequence of amendments to the Public Utilities Regulatory Policies Act (PURPA) contained in the Energy Independence and Security Act of 2007 (EISA), PURPA § 111(d)(16) now requires states "to consider imposing certain requirements and authorizing certain expenditures"⁴ pertaining to the Smart Grid.⁵

² Petition for Modification of Decision (D.)12-08-045 of Marin Energy Authority filed on July 12, 2013.

³ OIR at 2.

⁴ OIR at 8.

⁵ Recovery Act at Division A, Title IV, Sec. 408 re-designated PURPA § 111(d)(16) as § 111(d)(18).

After the issuance of the OIR, the American Recovery and Reinvestment Act (Recovery Act) appropriated \$4.5 billion “to modernize the electric grid” through activities including the Smart Grid programs authorized by EISA.⁶ The Recovery Act also amended several EISA provisions pertaining to the Smart Grid.⁷ For example, the Recovery Act increased the percentage of federal support for the EISA § 1306 program from 20% to up to 50%. The amendments broadened the potential recipients of EISA § 1304 funding to include electric utilities and “other parties.” The Recovery Act also added a requirement that funded projects use “open protocols and standards (including Internet-based protocols and standards) if available and appropriate.”⁸

In this rulemaking the Commission has developed policies related to Smart Grid that further our state’s energy policy goals as enunciated in the Energy Action Plan and state law, including Senate Bill (SB) 17⁹ and Assembly Bill (AB) 32.¹⁰ In addition, this rulemaking developed policies to protect customer privacy pursuant to SB 1476.¹¹ The addressing of this additional

⁶ The Recovery Act, Section 2, Division A, Title IV, Energy and Water Development states: “For an additional amount for ‘Electricity Delivery and Energy Reliability,’ \$4,500,000,000: Provided, That funds shall be available for expenses necessary for electricity delivery and energy reliability activities to modernize the electric grid, to include demand responsive equipment, enhance security and reliability of the energy infrastructure, energy storage research, development, demonstration and deployment, and facilitate recovery from disruptions to the energy supply, and for implementation of programs authorized under title XIII of the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17381 et seq.) ... ”

⁷ Recovery Act at Division A, Title IV.

⁸ Recovery Act § 405.

⁹ SB 17 (Padilla), Chapter 327, Statutes of 2009.

¹⁰ Global Warming Solutions Act of 2006 (AB 32), Chapter 488, Statutes of 2006.

¹¹ SB 1476 (Padilla), Chapter 497, Statutes of 2010.

legislation in this proceeding required the amendment of the proceeding's scope and added to its duration.

As reflected in the OIR that initiated this proceeding, this Commission supports national and state policies that seek to ensure that the evolution of our electric system will enable the key functional aspects of the Smart Grid.¹²

2. Summary of Major Decisions of R.08-12-009

Because of changing statutes and the resulting evolution in scope, this proceeding led to several major decisions which we will briefly review.

2.1. Decision 09-09-029

The processes and policies established by Decision (D.) 09-09-029, issued on September 15, 2009, were intended to align the timeline of the Commission's review of investor-owned utility Smart Grid projects with the The United States Department of Energy's (DOE) rapid timeline for reviewing and granting awards for projects.

D.09-09-029 found that the benefits that the United States DOE sought to achieve through its Smart Grid grants would also be beneficial to investor-owned utility ratepayers. These benefits included improving reliability, increasing energy efficiency and demand response, and reducing greenhouse gas emissions. D.09-09-029 further determined that the unique circumstances associated with the Recovery Act, including the United States DOE's rapid timeline for reviewing projects, granting awards, and starting construction, warrant rapid action on projects by this Commission. In this decision, we adopted a Tier-3 advice letter process for the review of those projects that have received a United States DOE Smart Grid Recovery Act award.

¹² See OIR 08-12-009 at 2.

2.2. D.09-12-046

D.09-12-046, issued on December, 29, 2009, adopted policies and findings to fulfill the regulatory obligations imposed on states by the EISA¹³ amendments to PURPA. This decision found that imposing EISA requirements on Sierra Pacific Power Company, Mountain Utilities, PacifiCorp, and Bear Valley Electric is inappropriate and inconsistent with the purposes of EISA.

In addition, this decision adopted policies for Southern California Edison (SCE), Pacific Gas & Electric (PG&E) and San Diego Gas & Electric (SDG&E) concerning consumer access to usage and price information that will be available through California's Smart Grid infrastructure and consistent with SB 17 (Padilla) (Chapter 327, Statutes of 2009), which sets as a goal for California "[i]ncreased use of cost-effective digital information and control technology to improve reliability, security, and efficiency of the electric grid."¹⁴ In particular, this decision establishes a policy goal that SCE, PG&E and SDG&E provide consumers with access to electricity price information by the end of 2010.

Concerning electricity usage data, we required that SCE, PG&E and SDG&E provide consumers and third parties approved by consumers with usage data that is collected by the utility by the end of 2010. The decision also requires that SCE, PG&E and SDG&E provide those customers with smart meters and authorized third parties access to usage data on a near real time basis by the end of 2011.

¹³ 16 U.S.C. § 2621(d). Section citations included in the text are to 16 U.S.C., unless noted otherwise.

¹⁴ Pub. Util. Code § 8360(a).

2.3. D.10-06-047

D.10-06-047, issued on June 28, 2010, provided SCE, PG&E and SDG&E with the guidance needed to file Smart Grid Deployment Plans with this Commission by July 1, 2011.

The California legislature and Governor have enshrined the importance of modernizing the state's electric grid through the enactment of SB 17 (Padilla), signed into law on October 11, 2009. SB 17 states that "[i]t is the policy of the state to modernize the state's electrical transmission and distribution system to maintain safe, reliable, efficient, and secure electrical service, with infrastructure that can meet future growth in demand" and achieve purposes specified in the law. Pursuant to SB 17, this proceeding, in consultation with the California Energy Commission (CEC), the Independent System Operator (ISO) and other key stakeholders, sets the requirements for Smart Grid Deployment Plans. This decision required that utilities follow a common outline in preparing their Smart Grid Deployment Plans.

In addition, D.10-06-047:

- Sets the requirements concerning the topics that the Smart Grid Deployment Plans must address, the information that the deployment plans must provide, and how the deployment plans must link each section and topic back to the policies set forth in SB 17 and in relevant Federal law.
- Required that the Smart Grid Deployment Plans present a vision of the Smart Grid consistent with legislative initiatives.
- Required that the Smart Grid Deployment Plans provide a deployment baseline so that the Commission could better understand the character of the California grid today and articulate a strategy for achieving the adopted goals.
- Required each utility to address grid security and cyber-security issues in their Smart Grid Deployment Plans

to ensure that these issues are considered explicitly at the planning stage.

- Linked California concerns for grid security with the security guidelines identified as under development by the National Institute of Standards and Technology.
- Adopted security strategy requirements and principles to guide the development of Smart Grid Deployment Plans to ensure alignment with national efforts.
- Provided a discussion of the cost and benefit procedures that the Smart Grid Deployment Plans should use to enumerate, quantify, and--to the extent feasible--monetize the costs and benefits of Smart Grid investments.
- Required the plans to follow cost-effectiveness analysis to meet legislatively mandated goals in a cost-effective way and requires the presentation of the "business case" analysis for other components of the Smart Grid.
- Found that the Smart Grid Deployment Plans should include metrics that permit the assessment of progress, but the adoption of specific metrics still requires additional work by parties. A subsequent decision later this year will endorse specific metrics for inclusion in Smart Grid Deployment Plans and other reports.
- Proposed to review the initial deployment plans in a single proceeding.
- Required that the utilities file annual reports on their Smart Grid activities, with the first annual reports due on October 1, 2012.

2.4. D.11-07-056

D.11-07-056, issued on July 29, 2011, adopted rules to protect the privacy and security of customer data generated by Smart Meters concerning the usage of electricity that are deployed by SCE, PG&E and SDG&E. The rules adopted implement the protections ordered by SB 1476 (Chapter 497, Statutes of 2010).

The adopted privacy and security rules apply both to PG&E, SCE, and SDG&E, and the companies that assist them in utility operations, companies that are under contract with the utilities, and other companies that may gain access to the customer's usage data directly from the utility. Under D.11-07-056, each utility must file within 90 days a Tier 2 advice letter proposing whatever tariff changes are necessary to conform its corporate policies concerning customer usage data to the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this decision.

In addition to the adopted rules protecting the privacy and security of usage data, D.11-07-056 adopted policies to govern access to customer usage data by customers and by authorized third parties. PG&E and SCE are required to continue to provide and SDG&E is required to provide access to customer usage data. Each utility was required to provide pricing, usage and cost data to customers in the customer-friendly manners discussed within the decision.

D.11-07-056 ordered PG&E, SCE, and SDG&E to each file a Tier 3 advice letter within four months to develop Smart Meter Home Area Network implementation plans specific to each. The decision also adopted reporting and audit requirements regarding the utilities' customer data privacy and security practices, third-party access to customer usage information, and any security breaches of customer usage information.

D.11-07-056 found that the adopted privacy and security rules and policies providing access to billing and usage data were reasonable. These measures protect the privacy and security of customer usage data while ensuring customer access to usage information while enabling utilities and authorized third parties to use the information to provide useful energy management and conservation services. In addition, the rules and policies are consistent with privacy and

security principles adopted by the Department of Homeland Security and with the policies adopted in SB 1476. Thus, these rules will bring California practices into conformity with the best national privacy and security practices.

D.11-07-056 commenced a new phase of this proceeding to explore how the Rules Regarding Privacy and Security Protections for Energy Usage Data in other requirements of this decision should apply to gas corporations, community choice aggregators, and electric service providers (ESPs).

2.5. D.12-04-025

D.12-04-025, issued on April 24, 2012, adopted consensus metrics to help measure the extent and effectiveness of Smart Grid investments made by SCE, PG&E and SDG&E. The purpose of establishing goals and metrics is to guide all stakeholders in a common policy direction as well as measure the performance of already deployed Smart Grid technologies.

D.12-04-025 also set the schedule for the future review and revision of Smart Grid metrics. Specifically, this decision directed parties and Commission Staff to create four Technical Working Groups to address four topics: 1) updates or revisions to the metrics adopted herein; 2) the creation of metrics related to cyber-security; 3) the creation of metrics related to environmental benefits; and, 4) the creation of broad goals to focus all stakeholders toward a common vision.

2.6. D.12-08-045

D.12-08-045, issued on August 31, 2012, established privacy protections for customer usage data for gas customers of SCE, PG&E and SDG&E. Southwest Gas Corporation and SCE's Santa Catalina Island Gas Utility were found exempt from complying with these privacy rules. In addition, this decision extended the privacy protections adopted in D.11-07-056 to the customers of Community Choice Aggregators (CCA) and to the residential and small commercial

customers of ESPs.

D.12-08-045 found that the extension of the privacy rules to the customers of gas corporations was consistent with Senate Bill 1476, Stats. 2009, ch. 32-- which adopted privacy protections for the customers of both electric and gas corporations who receive service using an Advanced Metering Infrastructure technology. The decision ordered PG&E and SDG&E Electric Company to file complying tariffs within 90 days of the effective date of this decision and ordered Southern California Gas Company (SoCal Gas) to file complying tariffs within 90 days of the effective date of this decision or concurrent with the installation of advanced meters (whichever is later).

Extending the privacy protections of D.11-07-056 to the customers of CCAs was also found to be consistent with the authority granted to the Commission in § 366.2(c), which permits the Commission “to ensure compliance with basic consumer protection rules.”¹⁵ The customers of CCAs receive metering, billing, bill collection, and customer service from the underlying investor-owned utility, and it was found reasonable that CCAs treat customers’ confidential usage information in the same manner as does the underlying investor-owned utility.

Finally, we found that extending the privacy protections of D.11-07-056 to the residential and small commercial customers of ESPs was consistent with the authority granted to the Commission in § 394.4, which directs the Commission to adopt rules for ESPs that treat customer information confidentially. We found it reasonable to provide residential and small commercial consumers with the basic level of privacy protections that they would receive from an investor-owned utility.

We ordered SCE, PG&E and SDG&E to file Advice Letters with

¹⁵ Unless stated otherwise, all statutory references are to the Pub. Util. Code.

conforming utility tariff changes that apply to ESPs receiving detailed usage data concerning customers. These tariff provisions are the means by which an ESP will be subject to the privacy rules. However, D.12-08-045 does not extend these privacy rules to ESPs that serve only large and medium commercial customers and industrial customers (and small commercial and residential customers affiliated therewith); nor does this decision require that ESPs providing service to a full range of customers offer these specific privacy protections to any but their residential and small commercial customers (when unaffiliated with larger customer accounts).

2.7. D.14-05-016

D.14-05-016, issued on May 5, 2014, adopted rules that provides access to energy usage and usage-related data to local government entities, researchers, and state and federal agencies when such access is consistent with state law and CPUC procedures that protect the privacy of consumer data.

D.14-05-016 did the following:

- Directed the provision of data containing “covered information,” including personal information, to the University of California and other nonprofit educational institutions for research purposes as long as the institutions requesting data conform to the processes and requirements set forth in this decision.
- Directed the utilities to post, starting 180 days from or the issuance of this decision, and on a quarterly basis thereafter, the total monthly sum and average of customer electricity and natural gas usage by zip code (when the zip code meets specified aggregation standards) and by customer class, as well as the number of customers in the zip code by customer class (i.e. residential, commercial, industrial, and agriculture).

- Directed utilities to make available to local governments yearly, quarterly, and monthly usage and usage-related data by data request when the data request meets certain requirements on aggregation and anonymization and restrictions on use and disclosure. Local government may request data by census block group or other grouping that it finds helpful.
- Directed utilities, after informing the Commission, to provide energy data to State and Federal government entities that need data to fulfill statutory obligations and request such data pursuant to this decision. The provision of energy usage data pertaining to low-income participants in energy efficiency programs to the California Department of Community Services and Development is approved.
- Created a process whereby entities can request energy usage and usage-related data from utilities and receive action on the request and resolution of disputes over access to data.
- Directed the formation of an Energy Data Access Committee to advise the utilities on process improvements and best practices related to data access and help mediate disagreements between the utilities and data requesters.

In D.14-05-016, we noted that other government agencies, such as the Federal Energy Regulatory Commission, the Energy Information Administration and the CEC have independent statutory bases for requesting access to energy usage data and nothing in this decision affects or abridges that access to data.

D.14-05-016 considered 12 “use cases” that constituted specific requests for energy consumption data and answers each request. As a result of the policies adopted pursuant to the use cases, D.14-05-016 facilitates access to energy data for local governments, academic researchers, and for government entities needing data to fulfill a statutory requirement. In conjunction with the transfer of any data, D.14-05-016 promulgated rules to ensure its protection.

3. Correction of Minor Errors in Prior Decisions

In implementing this array of decisions, the Commission staff identified a number of minor errors from previous decision which should be corrected.

3.1. Correction of Minor Errors in D.11-07-056.

It has come to our attention that D.11-07-056 requires corrections of minor errors. Up until this point, the electric utilities have been filing additional information on Rule 9(c), Training, although this is not the intent of the Commission, nor was it a requirement of D.11-07-056, Attachment D. Moreover, the utilities did not have clear orders in an ordering paragraph to file the information in Rule 4(c)(6), Rule 8(c), and Rule 9(e) as required by Attachment D. The following corrections are needed to clarify what information is required to be filed by IOU's in their annual privacy reports:

1. Ordering Paragraph 3 of D.11-07-056 shall require annual reports as required by Rule 4(c)(6), Rule 8(c), and Rule 9(e), to be consistent with ordering paragraph 1 of D.11-07-056, which adopts the Rules in Attachment D. The second sentence of Ordering Paragraph 3 of D.11-07-056 at 163 shall now read, "These annual reports must contain the information required to be reported annually by Rule 4(c)(6), Rule 8(c), and Rule 9(e) of the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this Decision."
2. Rule 9(e) in Attachment D of D.11-07-056 shall replace its reference to Rule 8(b) with a reference to Rule 8(c). Rule 9(e) on at 162 of D.11-07-056 shall now read: "Reporting Requirements. On an annual basis, each electrical corporation shall disclose to the Commission as part of an annual report required by **Rule 8.c.**" This is consistent with D.11-07-056, at 89, which adopted Rule 8 (Data Security), (c) Annual Reports of Breaches.

3. Conclusion of Law 23 of D.11-07-056 shall now consist of both sections 8(b) and 8(c), to be consistent with Attachment D. Conclusion of Law 23 shall now be read as:

"8. DATA SECURITY

- a) **Generally.** Covered entities shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.
- b) **Notification of Breach.** A covered third party shall notify the covered electrical corporation that is the source of the covered data within one week of the detection of a breach. Upon a breach affecting 1,000 or more customers, whether by a covered electrical corporation or by a covered third party, the covered electrical corporation shall notify the Commission's Executive Director of security breaches of covered information within two weeks of the detection of a breach or within one week of notification by a covered third party of such a breach. Upon request by the Commission, electrical corporations shall notify the Commission's Executive Director of security breaches of covered information.
- c) **Annual Report of Breaches.** In addition, electrical corporations shall file an annual report with the Commission's Executive Director, commencing with the calendar year 2012, that is due within 120 days of the end of the calendar year and notifies the Commission of all security breaches within the calendar year affecting covered information, whether by the covered electrical corporation or by a third party."
4. Rule 9(e), referenced within Conclusion of Law 24 on at 161 and 162, shall be corrected to reference "Rule 8(c)." Rule 9(e) on at 162 shall now read: "Reporting Requirements. On an annual basis, each electrical corporation shall disclose to the Commission as part of an annual report required by Rule 8.c."

3.2. Correction of Minor Errors in D.12-08-045

It has come to our attention that D.12-08-045 also requires corrections of minor errors. The first correction below inserts the reference of Rule 8(c) in place of 8(b). Minor corrections 2 and 3 clarifies that the gas corporations reporting requirements, including that privacy reports, should be filed annually, 120 days after the end of the calendar year. These reports should be filed with the Commission's Executive Director to be consistent with D.12-08-045, Attachment A. Please note the following changes to D.12-08-045:

1. Rule 9(e) found within Attachment A of D.12-08-45 shall replace its reference to Rule 8(b) with a reference to Rule 8(c). Rule 9(e) shall now read: "Reporting Requirements. On an annual basis, each electrical corporation shall disclose to the Commission as part of an annual report required by **Rule 8.c.**"
2. Ordering Paragraph 3 of D.12-08-045 shall be corrected to be consistent with Ordering Paragraph 1¹⁶ of the same decision. Ordering Paragraph 3 shall now be read as:
"Pacific Gas and Electric Company and San Diego Gas & Electric Company shall submit to the Commission's Executive Director annual privacy reports annual privacy reports and conduct independent audits of privacy policies concerning gas corporations commencing with calendar year 2012. Annual privacy reports will be due 120 days after the end of the calendar year and subsequent privacy audits will be due in March of the year in which the company's General Rate Case is being considered."
3. Ordering Paragraph 5 of D.12-08-045 shall be corrected to be consistent with Ordering Paragraph 1 of the same decision. Ordering Paragraph 5 shall now read:

¹⁶ Ordering Paragraph 1 references Attachment A and Rule 8(c) of Attachment A specifically requires Annual Report of Breaches to be filed with Commission's Executive Director.

“Southern California Gas Company must submit annual privacy reports to the Commission’s Executive Director and conduct independent audits of privacy policies commencing with March 2014. Subsequent annual privacy reports will be due 120 days after the end of the calendar year and subsequent privacy audits will be due in March of the year in which the company’s General Rate Case is being considered.”

4. Responses of Parties to Ruling pertaining to Closing the Proceeding

In response to the Chief Administrative Law Judge’s (ALJ) ruling seeking comments pertaining to closing this proceeding,¹⁷ PG&E, SCE, SDG&E and SoCal Gas voiced unanimous support for closing the proceeding and redirecting the continuing compliance filings to Energy Division. No protest was lodged at this request to redirect the compliance filings.

However, the Natural Resources Defense Council (NRDC) and Marin Clean Energy (MCE) were concerned with the effect that closing this proceeding would have on outstanding data request issues that they contest remain unresolved.

In addition to supporting the closing of this proceeding, PG&E favors revising the compliance reporting requirements to an informal submission to Energy Division, the Executive Director, and any additional parties the Commission deems necessary.¹⁸ PG&E has identified three separate compliance filings that it proposes to file through this informal submission process.¹⁹ PG&E has identified that its continuing obligations include the Recovery Act

¹⁷ Chief Administrative Law Judge’s Ruling Seeking Comments Pertaining to Closing this Proceeding and the Filing of Mandated Reports, July 7, 2014.

¹⁸ Comments of PG&E (U39E) on Chief Administrative Law Judge’s Ruling Seeking Comments on Closing the Proceeding and Filing of Mandated Reports at 2.

¹⁹ *Id.* at 3.

compliance report on its Compressed Air Energy Storage project through August of 2016, an Annual Smart Grid Update through October 1, 2020, and an annual privacy report.²⁰

SDG&E agrees with the position of PG&E. SDG&E will continue to submit Recovery Act compliance reports on its Grid Communication System through the end of 2014, an Annual Smart Grid Update through October 1, 2020, and an annual privacy report.²¹

In its protest against closing the proceeding, NRDC asserts that D.14-05-016 left the issue of access to multifamily residential energy usage data unresolved.²² NRDC asserts that the conclusions of law in D.14-05-016 allocates jurisdiction over access to nonresidential energy usage data to the CEC under the nonresidential building energy use disclosure program, but fails to address residential energy use data access.²³ NRDC urges the Commission to address this unresolved matter under the current proceeding, “[because] the CEC’s jurisdiction does not extend over residential building owners’ ability to access building level aggregated energy usage data.”²⁴

MCE avers that it is entitled to energy efficiency program participation data from PG&E, which it requires in order to fully implement its own energy

²⁰ *Id.*

²¹ Opening Comments of SDG&E (U902-E) on Chief Administrative Law Judge’s Ruling Seeking Comments on Closing the Proceeding and Filing of Mandated Reports at 2.

²² Comments of the NRDC on Chief Administrative Law Judge’s Ruling Seeking Comments Pertaining to Closing this Proceeding and the Filing of Mandated Report at 2.

²³ *Id.* at 3.

²⁴ *Id.* See D. 14-05-016: 12, Conclusions of Law 12, 14, and 15.

efficiency programs.²⁵ MCE asserts that this data is needed, “to direct EE marketing and outreach efforts, avoid double dipping, and understand how best to focus and design programs moving forward.”²⁶ MCE claims that PG&E refuses to provide this data “until [MCE] undergoes a PG&E security review.”²⁷ MCE requests that the Commission clarify that it is in fact entitled to this program data.²⁸ MCE has not directly protested the closing of the proceeding, but prays that the Commission will indicate a suitable forum where its outstanding data issues may be addressed.²⁹

5. Discussion

In its reply comments, SoCal Gas counters NRDC’s protest by asserting that the appropriate proceeding to address multifamily residential energy usage data issues upon the closure this proceeding is Application (A.) 11-05-017.³⁰ SoCal Gas asserts that, “The Commission is currently addressing this issue in the Low-Income Assistance Programs and Budgets Proceeding.” The Commission disagrees with SoCal Gas’ characterization that A.11-05-017 is the appropriate forum for all of NRDC’s and MCE’s outstanding data access issues. The data issues raised by NRDC and MCE do not strictly pertain to low-income multifamily units.

²⁵ Comments of MCE on Chief Administrative Law Judge’s Ruling Seeking Comments Pertaining to Closing this Proceeding and the Filing of Mandated Report at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 3.

²⁹ *Id.* at 1.

³⁰ Reply Comments of SoCal Gas to the Opening Comments of the NRDC on Chief Administrative Law Judge’s Ruling Seeking Comments Pertaining to Closing this Proceeding and the Filing of Mandated Report at 2.

PG&E argues that the Energy Data Access Committee³¹ established by D.14-05-016 may serve as an appropriate forum to address NRDC and MCE's data access issues³². The Commission disagrees with this contention. The data access concerns of MCE and NRDC are within the scope of R.13-11-005; subsequent to the closure of this proceeding, the appropriate venue for parties to address these remaining issues is R.13-11-005.³³

MCE requests that the Commission clarify that it is in fact entitled to PG&E's energy efficiency program participation data.³⁴ MCE alleges that this data "would be used by MCE to implement its EE programs, a purpose specifically enumerated in statute and further supported in PG&E and MCE nondisclosure agreements."³⁵

MCE's request in its comments bears great resemblance to its petition for modification of D.12-08-045, in which it "requests that the Commission clarify specific language in the CCA NDAs in order to reflect that customer data is appropriately utilized when covered by the Commission's definition of the primary purposes for the collection, storage, use or disclosure of covered information."³⁶

³¹ See D. 14-05-016, Ordering Paragraph 11.

³² Reply Comments of PG&E (U39E) on Chief Administrative Law Judge's Ruling Seeking Comments on Closing the Proceeding and Filing Mandated Reports

³³ See R.13-11-005 at 25: "This Rulemaking will address access and dissemination issues unique to energy efficiency not otherwise addressed in R.08-12-009."

³⁴ Comments of MCE on Chief Administrative Law Judge's Ruling Seeking Comments Pertaining to Closing this Proceeding and the Filing of Mandated Report at 2-3.

³⁵ *Id.* at 3.

³⁶ Petition for Modification of D.12-08-045 of the Marin Energy.

PG&E vociferously contests MCE's petition for modification as procedurally deficient, against public policy and contrary to legislative intent.³⁷ MCE's subtle reminder of its outstanding petition for modification does not go unnoticed.

However, we believe that this issue requires a more thorough review, and that the mediation of this issue within the broad policy context of R.13-11-005 will better serve all parties involved in this dispute. Given that this other proceeding is open, we deny MCE's petition for modification without prejudice. The matter shall be addressed in R.13-11-005, at a time deemed appropriate in that proceeding.

Lastly, we address the existing reporting mandates, which have been previously filed and housed on the docket of this proceeding. These filings are not formally reviewed or assessed by the Commission and are not available for comment by the parties of this proceeding. The IOU's commenting on this issue have universally requested that these filings be amended to an informal submission and redirected to the Energy division, the Executive Director, and any additional parties the Commission deems necessary.³⁸

There has been no protest lodged against this request. Given the ministerial nature of these filings and the lack of procedural ramifications for their redirection, the Commission finds that there is no good legal reason to require that the filings be formally submitted to the docket of this closed proceeding. The IOU's which maintain continuing filing requirements shall now informally submit those mandated reports to the Energy Division and the

³⁷ Response of PG&E (U39E) to Marin Energy Authority's Petition for Modification of D.12-08-045 at 1-7.

³⁸ Comments of PG&E (U39E) on Chief Administrative Law Judge's Ruling Seeking Comments on Closing the Proceeding and Filing of Mandated Reports at 2.

Executive Director when they are due. Any subsequent amendment to the parties to whom these filings are served, shall be complied within thirty days of notification by the Commission.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

The comments and reply comments merely reargue the points raised in earlier filings and do not require any separate discussion.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Chief ALJ Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. R.08-12-009 was initiated 6 years ago to consider Smart Grid technologies pursuant to Federal legislation and on the Commission's own motion to actively guide policy in California's development of a Smart Grid system.
2. Access to multifamily building data access is the only remaining disputed issue in R.08-12-009.
3. Recovery Act compliance filings and other mandated reports have been filed and housed on the docket of R.08-12-009.
4. The reports filed in the docket of R.08-12-009 are not subject to a formal review or assessment by the Commission in this proceeding.

5. There are minor errors in D.11-07-056 and D.12-08-045, which require correction in order to assist the IOUs in adequately responding to their compliance filing requirements.

Conclusions of Law

1. Subsequent to the closing of this proceeding, the appropriate forum to address any outstanding data issues, which arose from this proceeding, is R.13-11-005.

2. MCE's petition for modification if D. 12-08-045 is denied because the issues it raises should be addressed in R.13-11-005 at a time deemed appropriate in that proceeding.

3. There is no good legal reason to require that the compliance filings formerly filed and housed on R. 08-12-009 be formally submitted to the docket of this closed proceeding. The IOUs that maintain continuing filing requirements should now informally submit those mandated reports to the director of Energy Division, the Executive Director and any other party that the Commission deems necessary.

4. Since all outstanding issues in this proceeding have been resolved, this proceeding should be closed.

O R D E R**IT IS ORDERED** that:

1. PG&E, SCE, SDG&E and SoCal Gas shall submit their respective Recovery Act compliance filings and other mandated reports related to this proceeding to the director of the Energy Division and the Executive Director.

2. MCE's petition for modification of Decision 12-08-045 is denied.

3. The minor errors in D. 11-07-056 and D. 12-08-045 shall reflect the corrections made in section 4 of this decision.

4. Rulemaking 08-12-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.